

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

WP(C).No. 1157 of 2007(K)

PETITIONER:

THE AREA MANAGER,
FOOD CORPORATION OF INDIA, WEST HILL DEPOT.,
WEST HILL P.O., KOZHIKODE-5.

BY ADV. SRI.T.P.M.IBRAHIM KHAN, SC, FCI

RESPONDENTS:

1. P.VASU,
PARUTHIKKAD HOUSE, MANNUR,
KOZHIKODE-673 328.
2. GEORGE VARGHESE,
MANAGING PARTNER, M/S. GEORGE & COMPANY,
COMMISSION AGENT, PATHIRAPPALLY P.O.,
ALAPPUZHA DISTRICT.
3. THE PRESIDENT,
THE FOOD CORPORATION OF INDIA,
LABOUR CONTRACT CO-OPERATIVE SOCIETY LTD.,
WEST HILL, KOZHIKODE-5.
4. THE PRESIDING OFFICER,
LABOUR COURT, KOZHIKODE.

BY ADV. SRI.JOHNSON P.JOHN
SRI.RAJU SEBASTIAN VADAKKEKKARA
SRI.K.M.FIROZ
GOVERNMENT PLEADER SRI. A.J. VARGHESE.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
ON 23/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

W.P.(C)NO.1157 OF 2007

APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1: COPY OF AWARD DATED 12.3.2004 IN I.D. NO.20 OF 1996 PASSED BY THE 4TH RESPONDENT LABOUR COURT, KOZHIKODE.
- EXT.P2: COPY OF THE JUDGMENT OF THIS HON'BLE COURT DATED 23.12.2005 IN W.P.(C)NO. 33577 OF 2004 AND WRIT APPEAL NO.2688 OF 2005.
- EXT.P3: COPY OF THE ORDERS DATED 21.11.2006 PASSED BY R4.

1ST RESPONDENT'S EXHIBITS

- EXT.R1(A): COPY OF THE COUNTER AFFIDAVIT FILED BY 1ST PETITIONER.
- EXT.R1(B): COPY OF THE REPLY AFFIDAVIT FILED BY THE PETITIONER.
- EXT.R1(C): COPY OF THE JUDGMENT DATED 8.12.95 IN O.P.NO.16663/95

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)No. 1157 OF 2007

Dated this the 23rd day of October, 2007

JUDGMENT

The petitioner herein is the District Manager, Food Corporation of India, Kozhikode. He is challenging Ext.P3 order passed by the Labour Court, Kozhikode in M.P.No.33 of 2006 in I.D. No.20/96 refusing to correct Ext.P1 award earlier passed by the Labour Court in I.D.No.20/96 as prayed for by the petitioner in that M.P. The facts necessary for disposal of the writ petition are as follows:

2. The Government of Kerala referred the following issue for adjudication by the Labour Court, Kozhikode.

“Whether the action of the Management in denying employment to Shri. P. Vasu is justifiable? If not, what relief he is entitled to”.

Apparently in the reference order the petitioner, the President of the Food Corporation of India Labour Contract Co-Operative Society Ltd, West Hill, Kozhikode and the worker involved were

parties. In that award the Labour Court held that there is no justification in denying employment to Sri. P. Vasu and directed the management to reinstate him with 50% backwages. The petitioner herein challenged Ext.P1 award by filing W.P.(c) No.33577/04. In that writ petition, there was an interim order dated 5.12.2005 against which the petitioner herein filed W.A.No.2688/05. When the same was taken up for hearing, the counsel for the petitioner herein sought permission to withdraw the writ petition itself. The permission was granted and the writ petition itself was dismissed as withdrawn. Thereafter the petitioner filed M.P.No.33/06 to correct Ext.P1 award by correcting paragraph 15 by adding the words 'No.1' after the word 'management' occurring therein.

3. The Labour Court by Ext.P3 award came to the conclusion that the correction requested for, is not a clerical error or a mistake crept into the award as alleged by the petitioner and therefore the application cannot be allowed. The said order is under challenge before me.

4. The contention of the petitioner is that the workman involved was not a workman under the petitioner at all but a workman under the Food Corporation of India Labour Contract

Co-operative Society Ltd and therefore the petitioner could not be saddled with the liability to reinstate the workman as directed in Ext.P1 award. He would submit that the omission of the word 'No1' after the word 'management' in paragraph 15 of the award is clearly a clerical mistake which requires to be corrected. Therefore the only question before me is as to whether there is a clerical mistake in Ext.P1 award which requires to be corrected.

5. I am of opinion that the omission of the words 'No.1' after the word 'management' in paragraph 15 of the award is not an inadvertent omission, which is clear from the other parts of the award. In the award the liability of the petitioner as employer was also considered and decided against the petitioner. In paragraph 10 of Ext.P1 award it is specifically held that "these facts would invariably show that he was an employee for the relevant time in the FCI, District Depot, West Hill". In paragraph 13 of Ext.P1 award, it is held thus:

"It may also be noted that the evidence of MW1 would also support the case of the workman to a certain extent. His evidence would reveal that all the workers under the contractor

and the employees directly engaged by the 2nd Management are doing the work of FCI. His further statement in cross-examination that as and when the contractor is changed, normally the workers will not be changed, but continued, would support the contention of the worker.

If he were not an employee under the FCI as contended by the Managements, how his name happened to be entered in these 2 Registers has to be explained. None of the Managements had got any explanation regarding this and aspect. From these records, it can be held that the workman herein was an employee under FCI under the erstwhile contractor."

In paragraph 14, it is further held:

"It was held in FACT V.Chandramohan Nair (2001 (3) KLT 830) that the contract alone vanishes away from the field and every other ingredients of Labour system continues. In Calicut Airport Workers Association Vs. Union of India (1997(2) KLT S.Note 18 at page-16) it was held that

"Abolition of Contract Labour system ensures right to the workman for regularisation of them as employees in the establishment in which they are hitherto working as Contract Labour

through the contractor. The contractor stands removed from the regulation under the Act and direct relationship of 'employer and employee' is created between the Principal Employer and workmen. The object of the Act is to prevent exploitation of labour. The conditions of the labor cannot be left at the whims and fancies of the principal employer. The Contractor is an intermediary between the workman and the Principal Employer".

In the light of the above mentioned decision it has to be held that even if a contractor on the expiry of the term of the contract vanishes from the scene the employee under him would continue. In the case at hand it is in evidence that the worker herein was an employee as Office Staff under the erstwhile contractor and that he was denied employment by the subsequent contractor vis. The 1st Management. No justification at all is forth-coming for the denial of employment to the worker alone while all other employees were absorbed in employment by the subsequent contractor, Management No.1

6. In view of the above findings, it is abundantly clear that the Labuor Court made the petitioner which was one of the managements in the industrial dispute also liable for reinstatement of the workman in question and therefore the

omission of the words 'No.1' after the word 'management' in paragraph 15 is not an inadvertent mistake at all.

7. Originally, although the petitioner sought to challenge Ext.P1 award also apparently in view of the fact that the earlier writ petition challenging the very same award was withdrawn, without liberty to file a fresh one on the same cause of action, the petitioner has filed I.A.No.13039/2007 to amend the prayer portion of the writ petition confining the challenge to Ext.P3 alone. That being so, I am required only to consider the validity of Ext.P3. Since I have held that Ext.P3 is perfectly valid, nothing remains to be considered in this writ petition and accordingly the writ petition is dismissed.

S. SIRI JAGAN, JUDGE

Acd

